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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

BARON HANSON,

Defendant and Appellant.

2d Crim. No. B289652
(Super. Ct. No. 18MH-0035)
(San Luis Obispo County)

Baron Hanson is a mentally disordered offender (MDO). (Pen. Code, §2960 et seq.) He appeals a “*Qawi*” order allowing respondent Department of State Hospitals to administer antipsychotic medications without his consent.¹ Appellant forfeited his claim that the order is based on hearsay by failing to object at the hearing. Substantial evidence supports the trial court’s finding that he is incompetent to refuse medication. We affirm.

¹ *In re Qawi* (2004) 32 Cal.4th 1 (*Qawi*).

FACTS AND PROCEDURAL HISTORY

Appellant was admitted to Atascadero State Hospital (ASH) in February 2018. Eleven days later, a medical review hearing panel was convened because he refused to take a prescribed mood-stabilizing medication. Based on the panel's determination, appellant began receiving involuntary antipsychotic medication in March 2018.

Respondent petitioned the court to authorize involuntary treatment. Dr. Mark Daigle, staff psychiatrist at ASH, was respondent's medical expert. He prepared for the hearing by interviewing appellant, talking to appellant's psychiatrist, reviewing medical records, and reading respondent's petition.

Dr. Daigle testified as follows, without objection: Appellant is diagnosed with bipolar-type schizoaffective disorder. His symptoms are paranoia, grandiose delusions, mania and pressured speech, which he displayed during his interview with Dr. Daigle. Appellant believes he is Haile Selassie, the deceased emperor of Ethiopia, is related to royal personages, and is heir to a diamond fortune. He is upset that unknown persons are influencing state personnel to keep him confined and prevent him from obtaining \$17.8 billion he believes is due him. He has a history of violence. His illness requires treatment with antipsychotic medications.

Appellant believes he is neither mentally ill nor in need of antipsychotic medications. Dr. Daigle opined that appellant is very bright, but is upset at being told he is mentally ill because he denies having a disorder. He is unable to rationally decide whether to take medication.

Appellant testified that he disagrees with ASH's decision to put him on Depakote, which causes tremors, blurred vision,

constipation and possible nerve damage. He felt fine using two other medications and made a knowing and intelligent decision to refuse Depakote. He spoke to his doctor at ASH politely and correctly about his objections to Depakote. Appellant stated that when he refused medication, he was wrestled down for a forcible injection. He now acquiesces to medication, to avoid the use of force. He does not agree that he may have to take medication for a very long time, if not for the rest of his life. Appellant denied delusions about his family history, stating that his grandmother is from a famous diamond mining family and he is her sole heir.

The court granted respondent's petition, finding that appellant lacks capacity to refuse treatment. The court described appellant as highly intelligent and able to discuss the effects of his medications. He needs the medication, however, and his delusions impair his ability to make a rational choice.

DISCUSSION

An MDO may be compelled to take antipsychotic medication if he is dangerous to others or incompetent to refuse treatment. (*Qawi, supra*, 32 Cal.4th at p. 27.) When making a competency determination the court considers (1) the MDO's acknowledgement of mental illness; (2) his understanding of the benefits and risks of treatment, and alternatives to treatment; and (3) whether he is able to give informed consent and participate in the treatment decision, using rational thought processes. (*Id.* at pp. 17-18; *Riese v. St. Mary's Hospital & Medical Center* (1987) 209 Cal.App.3d 1303, 1322-1323.) "We review an order authorizing involuntary administration of antipsychotic medication for substantial evidence." (*People v. Fisher* (2009) 172 Cal.App.4th 1006, 1016; *State Dept. of State Hospitals v. J.W.* (2018) 31 Cal.App.5th 334, 344.)

Appellant argues that the court found him incompetent based on inadmissible case-specific hearsay from Dr. Daigle. (*People v. Sanchez* (2016) 63 Cal.4th 665, 685-686 [an expert cannot testify to case-specific facts outside his personal knowledge unless they are independently proven by competent evidence or covered by a hearsay exception].) The evidentiary challenge was forfeited by appellant's failure to object to the testimony. (*People v. Williams* (1997) 16 Cal.4th 635, 681.) A finding cannot be set aside or a judgment reversed for an erroneous admission of evidence unless the record contains a timely and specific objection. (Evid. Code, § 353, subd. (a).)

Appellant asserts that his counsel was ineffective because there was no tactical reason for failing to object to Dr. Daigle's testimony. (*Strickland v. Washington* (1984) 466 U.S. 668, 684-692 [80 L.Ed.2d 674, 691-697]; *People v. Mickel* (2016) 2 Cal.5th 181, 198.) Our review suggests a tactical reason: an objection may have led to the introduction of appellant's hospital records. (Evid. Code, §§ 1271, 1280; *People v. Diaz* (1992) 3 Cal.4th 495, 534-535; *Conservatorship of S.A.* (2018) 25 Cal.App.5th 438, 447-448; *People v. Nelson* (2012) 209 Cal.App.4th 698, 708, 710-713 [state hospital records are admissible non-testimonial evidence created for treatment and hospital safety].) The hospital records may contain information about appellant that counsel did not want the court to see.

Appellant must show that counsel's performance prejudiced his case. "Prejudice exists where there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." (*People v. Benavides* (2005) 35 Cal.4th 69, 93.)

The outcome would not be different had counsel made a hearsay objection. Much of Dr. Daigle's testimony is derived from his interview of appellant.² Experts may testify "to matters within their own personal knowledge." (*People v. Sanchez, supra*, 63 Cal.4th at p. 675; *People v. Bona* (2017) 15 Cal.App.5th 511, 522 [expert testimony was based, in part, on her observations of an MDO and information he conveyed].) Appellant's statements to Dr. Daigle come within the party admissions exception to the hearsay rule. (Evid. Code, § 1220; *People v. Yates* (2018) 25 Cal.App.5th 474, 485.)

Based on their meeting, Dr. Daigle opined that appellant cannot make treatment decisions because he denies having a mental disorder and is "not able to rationally make a decision whether it is worth taking the medication or not." Dr. Daigle felt that appellant's denial of illness is key to his inability to make treatment decisions. Evidence of appellant's paranoia and delusions came directly from appellant, who told Dr. Daigle that state employees are colluding with wealthy outsiders to keep him from his inherited billions. Appellant testified that he is heir to a diamond mining fortune.

² The reporter's transcript reads, "Q. When you spoke to [appellant] did he seem to understand that he has a mental illness? A. He does not believe he's mentally ill, and he's under a fair amount of distress, believing he's currently being confined against his will. Q. Does he believe he needs to take antipsychotic medications? A. He does not believe that. Q. Is he, in fact, against taking them? A. He wishes not to take them, but he stated that he would not instantly refuse them if he won his hearing today because he would be concerned about side effects related to suddenly withdrawing from the medication." (Paragraph markings omitted.)

There is substantial evidence that appellant is not competent to refuse treatment because he denies mental illness; does not understand the benefits of antipsychotic medicine; and cannot rationally participate in the treatment decision because he does not believe he is ill. (*Qawi, supra*, 32 Cal.4th at pp. 17-18.) Appellant's consistent denial of mental illness is more than a simple disagreement with his physician over a mode of treatment. (Compare *Conservatorship of Waltz* (1986) 180 Cal.App.3d 722, 732 [patient rationally rejected electroconvulsive therapy during periods of non-psychosis].)

DISPOSITION

The order is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Jesse J. Mariano, Judge

Superior Court County of San Luis Obispo

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